IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Ramdutt
vs.
Madan Lal and others.

S.B.CIVIL SECOND APPEAL NO.78/2004 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 2.8.2000 PASSED BY SHRI B.M. SOLERA, ADDITIONAL DISTRICT JUDGE NO.1, SRI GANGANAGAR IN CIVIL APPEAL NO.26/2000.

DATE OF JUDGMENT ::: 4.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.

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BY THE COURT:

Heard learned counsel for the appellant.

Brief facts of the case are that the plaintiffs filed a suit for permanent injunction with a specific plea that the land in question measuring 30 feet x 40 feet could not be allotted to the appellant/defendant and a specific issue was framed by the trial court on this plea. The case was

fully contested on this issue by producing evidence as well as by raising legal pleas by both the parties. The trial court vide its judgment and decree dated 30.3.2000 held that the said land could not have been allotted to the defendant no.2 by the respondent Municipal Council. The appellant being aggrieved against the judgment and decree passed by the trial court preferred appeal which was dismissed by the appellate court vide judgment and decree dated 2.8.2000. Hence, this second appeal.

According to learned counsel for the appellant, the two courts below proceeded on wrong assumption of law that the commercial land cannot be allotted to a private individual and the commercial land can be disposed of only by way of public auction. Learned counsel for the appellant pointed out that as per Rule 15(1) of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short 'the Rules of 1974'), a commercial land can be allotted to not only public and charitable institutions, commercial statutory or non-statutory institutions or bodies, central government, departments or educated unemployed youths under the self employment scheme but it can be allotted “to any other persons”. In view of the above, this is a error of law committed by the two courts below.

It is also submitted by learned counsel for the appellant that the suit as framed was not maintainable as the plaintiffs could have filed the suit for declaration or in fact, the suit filed by the plaintiffs is a suit for declaration and the suit has been filed without serving a

notice under Section 271 of the Rajasthan Municipalities Act, 1959 upon the defendant Municipality, therefore, the suit was not maintainable.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below and also perused Rule 15 of the Rules of 1974.

It is true that if Sub-Rule (1) of Rule 15 of the Rules of 1974 is read in isolation, non-residential land can be allotted to not only the institutions mentioned above or the persons referred above but it can be allotted to any person but from commercial plots “on terms and conditions prescribed in these Rules”. Sub-Rule (2) provides that, “Save as provided in the following sub-rules, Land of commercial nature shall be disposed of by public auction as prescribed in Annexure-A.” In Sub-Rule (3) and thereafter, the category of the persons have been given to whom land can be allotted.

It is clear from a bare reading of sub-rule (1) that the land can be allotted to any person on the terms and conditions prescribed under the Rules of 1974 only. The appellant's claim is that since he was in old possession of the land in dispute, therefore, he was entitled for the allotment of land but learned counsel for the appellant failed to point out any of the Rule under which commercial land can be allotted to the occupant of the land on the ground that he is in old possession, therefore, the very foundation of the claim is hit by Rule 15(1).

In view of the above, I do not find that the two courts below have committed any error of law or error of fact in decreeing the suit of the plaintiffs restraining the respondents from allotting the land in dispute to the appellant.

In view of the above, I do not find any merit in the appeal. No substantial question of law is involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya